

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMES F., by and through his next	§	
friends, CHRISTINE F. and MICHAEL F.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 4:23-cv-02063
	§	
CLEAR CREEK INDEPENDENT	§	
SCHOOL DISTRICT,	§	
	§	
Defendant.	§	

**AGREED MOTION TO EXTEND DEADLINE FOR DEFENDANT TO RESPOND TO
PLAINTIFF’S MOTION FOR ADMISSION OF ADDITIONAL EVIDENCE**

Defendant, Clear Creek Independent School District (“District”) hereby files this Agreed Motion to Extend the Deadline for Defendant to Respond to Plaintiff’s Motion for Admission of Additional Evidence, and would respectfully show the Court as follows:

1) The most recent deadline for Plaintiff to file a motion requesting to enter additional evidence in this case was December 18, 2023. Defendant was to file a response by January 10, 2024. *See* Doc. No. 12.

2) Plaintiff did not file any motion on December 18, 2023. Due to errors in attempting to file such motion on December 18, 2023, Plaintiff filed a Motion for Leave to File Motion for Admission of Additional Evidence (“Motion for Leave”) on December 21, 2023. The Motion for Leave had attached to it Plaintiff’s Motion for Admission of Additional Evidence (“Motion to Add”) to which the additional evidence was attached. *See* Doc. No. 13.

3) The Defendant filed a response to the Motion for Leave on December 28, 2023, reflecting communications between counsel for the Defendant and counsel for the Plaintiff, Mr.

Mark Whitburn, and informed the Court that the Defendant is not opposed to Plaintiff filing the Motion for Leave so long as the Defendant has adequate time to respond. *See* Doc. No. 14.

4) If the Motion to Add had been filed timely on December 18, 2023, the District was open that week and counsel for the Defendant would have had the opportunity to work with staff to attain information and/or documents necessary for filing an opposition to the Motion to Add objecting to the request. However, the District did not receive the Motion to Add, attached to the Motion for Leave, until late on December 21, 2023. The District closed on December 22, 2023, and will not reopen until January 8, 2024.

5) If the Court grants the Petitioner's Motion for Leave to File Motion for Admission of Additional Evidence, the District needs adequate time to gather information and/or documents to use in filing a response opposing the Motion for Admission of Additional Evidence. For example, the District has a long and extensive history with Dr. Roman Lantzy for a significant time prior to the due process hearing regarding Plaintiff James F. in which she could have testified. Beginning January 8, 2024, District staff will be working to get school off to a smooth start for the beginning of the new semester and the District needs adequate time to gather information relevant to the factors that the Court will need to consider concerning the motion to add additional evidence in this case to what is already an extensive record from the due process hearing.

6) If the Court grants Plaintiff's Motion for Leave to File Motion for Admission of Additional Evidence, the District requests the deadline to file a response opposing the Motion for Admission of Additional Evidence to January 22, 2024. Extending the date to respond will not affect the current scheduling order regarding the date to file cross motions for summary judgment on February 16, 2024.

7) This Motion to extend the deadline for the District to file a response opposing the Plaintiff's Motion for Admission of Additional Evidence, if the Court grants the Plaintiff's Motion

for Leave, is not made for the purpose of delay. It is made so that the District will have adequate time to gather the information and/or documents for the District's opposition to the motion which are relevant to the factors the Court is to consider in ruling on a request to add to the existing record created through the administrative process.

Respectfully submitted,

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By: /s/ Janet L. Horton

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ATTORNEYS FOR CLEAR CREEK ISD

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading has been served on all counsel of record through the Court's electronic filing system, on December 28, 2023:

Mark Whitburn
Sean Pevsner
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Arlington, Texas 76006

/s/ Janet L. Horton

Janet L. Horton

CERTIFICATE OF CONFERENCE

On December 27, 2023, I conferred with counsel for the Plaintiff, Mark Whitburn, regarding this Motion to Extend the Deadline for Defendant to Respond to the Plaintiff's Motion for Admission of Additional Evidence if the Court grants Plaintiff's Motion for Leave to File Motion for Admission of Additional Evidence, and he agreed to extend the date for the District to file a response to the Motion for Admission of Additional Evidence to January 22, 2024, and to file this motion as an agreed motion.

/s/ Janet L. Horton

Janet L. Horton